

# **EXHIBIT E**

## **REDACTED PUBLIC VERSION**

1 IN THE UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF OKLAHOMA

3 VIDEO GAMING TECHNOLOGIES, :

4 INC., :

5 Plaintiff, :

6 :

7 vs. :

8 :

9 CASTLE HILL STUDIOS LLC, :

10 et al., :

11 Defendants. : NO.17-CV-00454-GKF-JFJ

12  
13 VIDEOTAPE DEPOSITION OF YORAM JERRY WIND

14 Philadelphia, PA

15 Thursday, September 20, 2018

16 8:04 a.m.

17  
18  
19  
20  
21  
22 Job No.: 206658

23 Pages: 1-292

24 Reported by: Jennifer P. Miller, RPR, CCR, CRR

25 #30XI00235100

Transcript of Dr. Yoram (Jerry) Wind  
Conducted on September 20, 2018

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1 Deposition of YORAM JERRY WIND

2 held at the offices of:

3  
4  
5  
6  
7  
8 SAUL EWING ARNSTEIN & LEHR LLP

9 1500 Market Street

10 Philadelphia, PA 19102

11  
12  
13  
14  
15  
16  
17  
18  
19  
20 Pursuant to agreement, before Jennifer P. Miller,  
21 RPR, CCR, CRR #30XI00235100 and Notary Public.  
22  
23  
24  
25

Transcript of Dr. Yoram (Jerry) Wind  
Conducted on September 20, 2018

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Transcript of Dr. Yoram (Jerry) Wind  
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P R O C E E D I N G S

THE VIDEOGRAPHER: We're now on the  
record. Here begins tape number one of the  
videotaped deposition of Yoram Jerry Wind  
taken in the matter of Video Gaming Tech  
versus Castle Hill Studies. Today's date is  
September 20, 2018. The time on the video  
monitor 8:04 a.m.

08:04:40

08:04:41

08:04:44

08:04:47

08:04:49

08:04:53

08:04:56

The videographer for today is

08:04:59

Armando Forte representing Planet Depos.

08:05:00

This video deposition is taking place at the

08:05:04

Offices of Saul Ewing, that's 1500 Market

08:05:06

Street, Philadelphia, Pennsylvania. Would

08:05:09

counsel please identify themselves and who

08:05:11

they represent.

08:05:13

MR. PLATT: Henry Platt, Saul Ewing  
Arnstein & Lehr, on behalf of the Defendants.

08:05:15

08:05:16

MS. FLAX: Sherry Flax, Saul Ewing  
Arnstein & Lehr, on behalf of Castle Hill.

08:05:20

08:05:22

MR. ROMAN: Neil Roman, Covington &  
Burling, on behalf of the Plaintiff VGT.

08:05:27

08:05:28

THE VIDEOGRAPHER: The Court

08:05:31

Reporter for today is Jennifer Miller

08:05:31

representing Planet Depos. She will now

08:05:34

swear in the witness and we will proceed.

08:05:44

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Transcript of Dr. Yoram (Jerry) Wind  
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1	through Covington & Burling. I'm not sure whether	08:48:34
2	there was any formal discussion or not. But there	08:48:37
3	definitely was communication because they	08:48:42
4	submitted the invoices directly to them.	08:48:44
5	Q. So other than communications involving	08:48:48
6	invoices, are you aware of any communications	08:48:54
7	between Covington & Burling and anyone at Research	08:48:56
8	Now regarding the substance of this case?	08:48:59
9	A. No.	08:49:05
10	Q. Do you know whether anybody at Research	08:49:13
11	Now had any communications with anybody at VGT	08:49:15
12	regarding the substance of this case?	08:49:20
13	A. I'm almost certain, but no.	08:49:24
14	Q. You said you have an assistant?	08:49:37
15	A. Yes.	08:49:39
16	Q. Do you charge for your assistant's time	08:49:39
17	in this case?	08:49:41
18	A. No.	08:49:42
19	Q. Other than your assistant and Research	08:49:44
20	Now, have you involved anybody else in this case?	08:49:46
21	A. No.	08:49:54
22	Q. You don't tag any students to come and	08:49:57
23	do some work for you?	08:50:00
24	A. No, not a good practice.	08:50:01
25	Q. What percentage of your annual income	08:50:12



Transcript of Dr. Yoram (Jerry) Wind  
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1	would you say is from your consulting expert	08:50:15
2	services?	08:50:19
3	A. In legal cases?	08:50:21
4	Q. I'm sorry?	08:50:22
5	A. In legal cases?	08:50:23
6	Q. Yes.	08:50:24
7	A. About a third.	08:50:25
8	Q. If you could turn to Appendix H of	08:50:46
9	Exhibit 1, your opening expert report.	08:50:49
10	A. Yes.	08:50:58
11	Q. Can you explain what Appendix H to your	08:51:01
12	report is.	08:51:07
13	A. It's the full list of materials that I	08:51:09
14	reviewed in this case.	08:51:11
15	Q. When you say your full list, if you turn	08:51:14
16	to Appendix C of your reply report, there's	08:51:17
17	additional materials, correct?	08:51:21
18	A. Correct.	08:51:22
19	Q. I wasn't trying to mislead you there,	08:51:23
20	I'm just making sure the record is clear.	08:51:28
21	A. This is the material I reviewed before	08:51:30
22	preparing the first report.	08:51:33
23	Q. And the material that's in exhibit C to	08:51:34
24	your reply expert report are new materials that	08:51:38
25	you reviewed after you prepared your initial	08:51:42

Transcript of Dr. Yoram (Jerry) Wind  
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1	report?	08:51:45
2	A. Correct.	08:51:45
3	Q. Now, does this Appendix H list a	08:51:55
4	complete list of the materials you reviewed in	08:51:59
5	this case?	08:52:00
6	A. Yes.	08:52:02
7	Q. And how were these documents provided to	08:52:04
8	you?	08:52:06
9	A. Sent to me typically electronically,	08:52:11
10	occasionally by Federal Express from Covington &	08:52:12
11	Burling.	08:52:20
12	Q. Do you prefer to review the materials	08:52:24
13	electronically or in paper format?	08:52:28
14	A. Depending what type of material.	08:52:31
15	Q. So, say, if you had a nearly 800-page	08:52:32
16	expert report, you would look at that how, on	08:52:35
17	paper or --	08:52:39
18	A. On paper.	08:52:39
19	Q. Did you personally review the materials	08:52:52
20	that are listed in Exhibit H and exhibit C of the	08:52:53
21	reply?	08:52:57
22	A. Yes.	08:52:59
23	Q. Did you review all of it?	08:52:59
24	A. Yes.	08:53:01
25	Q. You read everything provided?	08:53:01

Transcript of Dr. Yoram (Jerry) Wind  
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1	stimuli.	09:16:22
2	You know, the most critical thing	09:16:23
3	was we had a very hard time finding the stimuli	09:16:24
4	that we could use in the study.	09:16:30
5	Q. So I think I've talked about IGT and	09:16:31
6	Scientific Game. I'm not sure which ones I did,	09:16:37
7	frankly, to be honest with you, so we'll just make	09:16:40
8	it a group.	09:16:42
9	So for IGT, Scientific Games and	09:16:44
10	Konami, as you sit here today, do you know whether	09:16:47
11	you were able to find any other games that they	09:16:51
12	have with the word "money" in the title?	09:16:54
13	A. I don't recall.	09:16:56
14	Q. And if you did find them, you chose not	09:16:57
15	to use them because of -- for other reasons,	09:16:59
16	correct?	09:17:03
17	A. Well, the other reasons, as I mentioned	09:17:03
18	before, is the overall consideration of similar	09:17:08
19	characteristics to the --	09:17:12
20	Q. I don't mean to cut you off, sir. I'm	09:17:14
21	not asking about the other considerations.	09:17:16
22	My question is -- I understand you	09:17:22
23	used other considerations in formulating -- in	09:17:25
24	picking the pictures for the survey. My question	09:17:28
25	is, you know, were there games from IGT, Konami or	09:17:33

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1	not, but I remember seeing -- while we were on the	09:23:47
2	phone, I remember looking that at pictures.	09:23:51
3	Q. So you said in addition you didn't list	09:23:59
4	it in the report, but in addition to Castle Hill's	09:24:01
5	website and VGT's website and Scientific Games'	09:24:05
6	website and IGT's website and Konami's website,	09:24:12
7	did you review the websites of any other gaming	09:24:15
8	companies in choosing stimuli or in preparation of	09:24:18
9	your report?	09:24:27
10	A. No.	09:24:28
11	Q. So you did not look at AGT's website?	09:24:28
12	A. Which one?	09:24:32
13	Q. AGT, Aristocrat's.	09:24:33
14	A. I don't recall.	09:24:38
15	Q. Did you look at Aruze?	09:24:38
16	A. I don't think so.	09:24:41
17	Q. Gaming Arts?	09:24:42
18	A. It doesn't ring a bell.	09:24:47
19	Q. Novomatic?	09:24:49
20	A. No.	09:24:51
21	Q. Apollo Gaming Management?	09:24:51
22	A. No.	09:24:54
23	Q. Bally's?	09:24:55
24	A. No.	09:24:56
25	Q. So the websites that you looked at were	09:24:57

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1	that you rejected and the reasons why?	09:38:23
2	A. No.	09:38:25
3	Q. Do you recall any specific games that	09:38:28
4	you considered but rejected?	09:38:29
5	A. No.	09:38:34
6	Q. Now, I think you said earlier that you	09:38:34
7	tried to use photos; is that correct?	09:38:37
8	A. Correct.	09:38:42
9	Q. And why did you not use photos?	09:38:42
10	A. I'm sorry, I wanted to use video. I	09:38:45
11	wanted to use video pictures. We could not get	09:38:49
12	videos. We ended up using basically the -- the	09:38:54
13	still photographs of the machines.	09:38:57
14	So, ideally, I wanted to be able to	09:39:00
15	capture the sound, a little bit of the entire	09:39:02
16	day-to-day dynamics of the machines, but we could	09:39:08
17	not get videos.	09:39:11
18	Q. So your preference for the survey was to	09:39:13
19	use videos of the machines?	09:39:15
20	A. Correct.	09:39:17
21	Q. But you did not get that?	09:39:18
22	A. Correct.	09:39:21
23	Q. What attempts did you make to get the	09:39:21
24	videos?	09:39:24
25	A. Well, I know that Rebecca spent a lot of	09:39:25

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1	time trying to find out if we could get it and we	09:39:29
2	could not get -- could not get permission to go to	09:39:32
3	the casinos to videotape it. We basically were	09:39:35
4	not able to get video.	09:39:41
5	Q. Did you consider using videos from	09:39:43
6	online sources such as YouTube?	09:39:47
7	A. No. We needed basically videos that we	09:39:52
8	could show kind of basically the five stimuli side	09:39:55
9	by side, and we could not get them.	09:39:58
10	Q. Now, you ended up using drawings in your	09:40:05
11	array. Did you consider using photos after you	09:40:07
12	determined you couldn't get videos?	09:40:09
13	A. We used the -- the only thing that we	09:40:13
14	could get is the one that we used.	09:40:15
15	Q. So you could not get pictures,	09:40:20
16	photographs, of any of these machines?	09:40:23
17	A. Nothing beyond what we were able to get,	09:40:27
18	those five photographs, the kind of stimuli that	09:40:29
19	we use.	09:40:35
20	Q. What efforts did you make to get photos	09:40:35
21	of these games?	09:40:38
22	A. The same one. Basically, we had a	09:40:40
23	number of discussions with Rebecca, and she tried	09:40:41
24	her best to try to get us the stimuli, and we	09:40:49
25	ended up with the only one that was available.	09:40:51

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1	selected, the one for inclusion, the five stimuli	09:42:26
2	in the study.	09:42:32
3	Q. So you made the final selection on which	09:42:33
4	machines to use?	09:42:35
5	A. Yes, based on the available -- the	09:42:36
6	available material that was given to me.	09:42:39
7	Q. Do you recall any -- do you recall any	09:42:45
8	machines that you rejected --	09:42:51
9	A. No.	09:42:52
10	Q. -- in making your final decision?	09:42:52
11	Do you recall reviewing any videos	09:43:00
12	of game play of any of these five machines?	09:43:02
13	A. No, I was not able to see any videos.	09:43:08
14	Q. In Appendix C to your reply, you list a	09:43:15
15	YouTube.com website and a Facebook.com Castle Hill	09:43:26
16	Gaming, slash, videos. Did you review those two	09:43:32
17	those videos?	09:43:39
18	A. Yes, but not for the original report.	09:43:41
19	Q. So that was afterwards?	09:43:43
20	A. Afterwards.	09:43:45
21	Q. So you became aware after you submitted	09:43:45
22	your original report that there are in fact videos	09:43:49
23	online of the various games?	09:43:52
24	A. Correct.	09:43:54
25	Q. On page seven of your report, you state	09:44:01

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1	that you used three control EGMs also found in	09:44:04
2	Oklahoma, and then you drop a footnote, footnote	09:44:10
3	three, stating that all of the EGMs depicted on	09:44:16
4	these images were in the Choctaw Durant Casino as	09:44:22
5	of January 2018.	09:44:25
6	What is the source of that	09:44:29
7	information?	09:44:29
8	A. Rebecca.	09:44:32
9	Q. And you don't mention that in your	09:44:33
10	report, do you?	09:44:34
11	A. Well, I believe that's a true statement,	09:44:39
12	so...	09:44:42
13	Q. Well, did you conduct any independent	09:44:48
14	research at all into the Oklahoma gaming market as	09:44:50
15	to what was available there?	09:44:55
16	A. No. I relied on the lawyers on VGT to	09:44:56
17	provide this information.	09:45:01
18	Q. Why didn't you do independent research?	09:45:01
19	A. I didn't see any need for.	09:45:05
20	Q. Did you conduct any independent research	09:45:08
21	at all into the class II gaming market?	09:45:10
22	A. No. I basically saw no -- no need for	09:45:14
23	doing it given that I had experts who could	09:45:17
24	provide me the information about it.	09:45:23
25	Q. What is your understanding of what the	09:45:28



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1	class -- what class II gaming is?	09:45:30
2	A. It's primarily bingo-based machines.	09:45:38
3	Q. What do you base that on?	09:45:45
4	A. On some of the readings and some of the	09:45:47
5	discussions that I had with counsel.	09:45:52
6	Q. So everything you know about the	09:45:55
7	Oklahoma gaming market, class II gaming in	09:45:58
8	general, you learned from VGT's attorneys and the	09:46:01
9	materials they provided to you; is that correct?	09:46:07
10	MR. ROMAN: Object to the form.	09:46:10
11	A. Tons of material. If you look at the	09:46:12
12	appendix listing of the material, there's a lot of	09:46:13
13	material, a lot of depositions, a lot of	09:46:15
14	information about the machines in the casinos.	09:46:18
15	Q. All of which was provided to you by	09:46:21
16	VGT's attorneys, correct?	09:46:23
17	A. Correct, customarily, that's the source	09:46:24
18	of information we typically get in these cases.	09:46:28
19	Q. In the preparation of your report and	09:46:33
20	your survey itself and the design of the survey,	09:46:34
21	did you go to any casinos in Oklahoma?	09:46:38
22	A. No, I did not.	09:46:43
23	Q. Why not?	09:46:44
24	A. I didn't have the time.	09:46:45
25	Q. Have you ever been to a casino in	09:46:46

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1	Oklahoma?	09:46:48
2	A. No.	09:46:49
3	Q. Have you ever been in an Indian casino?	09:46:50
4	A. No.	09:46:53
5	Q. Have you ever been in a casino?	09:46:54
6	A. Yes.	09:46:57
7	Q. Have you ever seen a VGT game in person?	09:46:58
8	A. No.	09:47:04
9	Q. So is it fair to say you've never	09:47:04
10	actually played a VGT game?	09:47:07
11	A. Correct.	09:47:09
12	Q. So everything you know about the game	09:47:09
13	feel or overall -- well, feel of their trade dress	09:47:13
14	is information you received from VGT's attorneys,	09:47:19
15	correct?	09:47:23
16	A. And the material I read, there are tons	09:47:23
17	of material about it to describe it.	09:47:26
18	Q. And have you ever seen a Castle Hill	09:47:29
19	game in person?	09:47:31
20	A. Same answer as VGT.	09:47:32
21	Q. Have you ever played a slot machine?	09:47:38
22	A. Yes.	09:47:42
23	Q. And when was that?	09:47:43
24	A. Years ago.	09:47:47
25	Q. Where was that?	09:47:49

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1	A.	No.	09:51:07
2	Q.	Was that important to you?	09:51:09
3	A.	I'm not a typical player, so for me it's	09:51:12
4		not, but I'm not the target audience.	09:51:17
5	Q.	Were there any cartoon characters	09:51:20
6		associated with any of the games you played?	09:51:24
7	A.	I have no recollection.	09:51:27
8	Q.	This may be a somewhat metaphysical	09:51:29
9		question, but was the slot machine you were	09:51:33
10		sitting or standing in front of in the casino a	09:51:36
11		drawing or a physical object?	09:51:40
12		MR. ROMAN: Object to the form.	09:51:46
13	A.	I'm not sure what you mean by drawing.	09:51:49
14	Q.	Sure. Did you play a picture or did you	09:51:51
15		play a physical machine?	09:51:52
16		MR. ROMAN: Object to the form.	09:51:55
17	A.	I think it was a physical machine.	09:51:56
18	Q.	And that's an educated guess?	09:52:03
19	A.	Correct.	09:52:05
20	Q.	You said the casino was loud. What kind	09:52:10
21		of sounds did you hear in the casino?	09:52:12
22	A.	I'm trying to reconstruct it. It's a	09:52:21
23		lot of people, you know, the noisy machines.	09:52:24
24	Q.	Did you hear bells?	09:52:31
25	A.	I would assume, but yes. But I cannot	09:52:37

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1	it. I primarily in reviewing thought the report	09:57:57
2	was primarily when I was asked to evaluate his	09:58:01
3	reliance on the surveys.	09:58:06
4	So my opinion there is not really a	09:58:08
5	critique evaluation of his damage model, but	09:58:11
6	rather very specific part of his report that	09:58:16
7	related to his reliance on the surveys, which I	09:58:18
8	reviewed in the -- in the case in preparation for	09:58:22
9	my report.	09:58:26
10	Q. And do you consider yourself to be a	09:58:26
11	damages expert?	09:58:28
12	A. No.	09:58:29
13	Q. Did you review the expert report of	09:58:33
14	VGT's expert Stacy Freedman?	09:58:36
15	A. No.	09:58:39
16	Q. Do you know what the topic of that	09:58:39
17	report was?	09:58:41
18	A. No.	09:58:42
19	Q. Did you review the expert report of	09:58:42
20	Castle Hill's expert Joe Valandra?	09:58:44
21	A. Unless it's in any of the depositions	09:58:51
22	listed and in -- or the material listed in my	09:58:58
23	original report, no, I don't recall it.	09:59:03
24	Q. So if it's not in your report, you	09:59:05
25	didn't review it?	09:59:07

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1	specifics of how it works. It's a component of	10:12:16
2	the -- of the product.	10:12:22
3	Q. It's a component of the product. Is it	10:12:23
4	a visual component, a mechanical component, an	10:12:26
5	audio component, what kind of component is it?	10:12:32
6	A. I think it's --	10:12:34
7	MR. ROMAN: Object to the form.	10:12:36
8	A. I'm not an expert on the -- on the	10:12:38
9	gaming machines. I think this is a visible	10:12:41
10	component of the machine.	10:12:46
11	Q. Okay. Have you reviewed any videos of	10:12:48
12	this component of the machines?	10:12:51
13	A. I reviewed a number of pictures. I	10:12:58
14	don't recall the video of this, but I reviewed a	10:13:01
15	number of pictures and descriptions of these	10:13:04
16	design elements.	10:13:09
17	Q. As you sit here today, can you tell me	10:13:10
18	what happens on the machine during the free spin	10:13:12
19	feature on a VGT machine?	10:13:19
20	A. I'm not sure I know how to answer this.	10:13:24
21	Q. I'm sorry?	10:13:27
22	A. I'm not sure I know how to answer it.	10:13:28
23	Q. Well, yes or no.	10:13:31
24	A. I don't think I can describe it.	10:13:38
25	Q. All right. So you don't think you've	10:13:39

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1	have is underestimating the real confusion in the	10:17:49
2	marketplace because we were not able to capture in	10:17:53
3	our stimuli other features, which are basically by	10:17:56
4	design similar to the VGT, and therefore, would	10:18:01
5	have led to higher confusion.	10:18:04
6	Q. And that's based on the materials	10:18:07
7	provided to you by VGT's attorneys, correct?	10:18:08
8	A. That's based on the material available.	10:18:12
9	Because if there was other material that	10:18:15
10	contradicts this, why didn't your expert	10:18:18
11	Mr. Berger bring them, he didn't bring even one	10:18:21
12	material in his criticism to suggest that this is	10:18:24
13	not correct.	10:18:27
14	Q. Well --	10:18:28
15	A. So I have no reason to believe that the	10:18:28
16	material that I relied on are not representative.	10:18:31
17	Q. Well, do you recall Mr. Berger's report	10:18:33
18	he cited to two videos, which you then claimed to	10:18:38
19	have reviewed, which show Castle Hill's instant	10:18:42
20	free pay feature and the other one showing VGT's	10:18:45
21	red screen free spin features. And did you in	10:18:49
22	fact review that?	10:18:53
23	A. Very briefly.	10:18:54
24	Q. Very briefly. And can you tell me what	10:18:55
25	the difference is between Castle Hill's instant	10:18:57

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1	your background portion of the report.	10:21:03
2	A. I believe reading some of the material	10:21:07
3	that it's a -- the fact that the bell is embedded	10:21:10
4	in the machine, they try -- actually, I think some	10:21:14
5	of the -- the documents show that Castle Hill	10:21:19
6	tried to replicate the sound of the bell.	10:21:25
7	Q. All right. Do you know what makes their	10:21:28
8	bell distinctive?	10:21:30
9	A. No.	10:21:31
10	Q. And I think you testified earlier when	10:21:33
11	you were in the casinos in Atlantic City and Las	10:21:34
12	Vegas, you heard lots of bells going off in the	10:21:40
13	casinos, right?	10:21:43
14	A. Yes.	10:21:44
15	Q. And could you distinguish between any of	10:21:44
16	those bells?	10:21:47
17	A. Again, you're bringing an example for	10:21:48
18	me. I'm not a typical, you know, person who plays	10:21:50
19	those machines, so I'm the wrong person to answer	10:21:52
20	it.	10:21:54
21	Again, because we know the fact	10:21:56
22	that they try to copy the sound of the bell and	10:21:58
23	because I could not replicate the sound of the	10:22:03
24	bell in my stimuli, to the extent that the two are	10:22:05
25	similar as some of the data showed that I	10:22:11

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1	reviewed, then my estimate of confusion is	10:22:16
2	underestimating because you did not take this into	10:22:19
3	account.	10:22:22
4	Q. But, again, you did not actually present	10:22:23
5	the bell signs to any of the respondents in your	10:22:25
6	survey to compare?	10:22:28
7	A. Correct. And that's the reason I'm	10:22:29
8	saying that the --	10:22:32
9	Q. I understand.	10:22:32
10	A. -- estimate is -- that my estimate is	10:22:33
11	underestimating the level of confusion.	10:22:35
12	Q. My question is you didn't test for it,	10:22:38
13	though, correct?	10:22:40
14	A. Correct.	10:22:41
15	Q. Now, going back to your description in	10:22:41
16	the background on page one of the report, you	10:22:44
17	mention the distinctive size, shape and layout of	10:22:48
18	VGT's cabinet frame; do you see that?	10:22:54
19	A. Yes.	10:22:57
20	Q. Can you explain what the distinctive	10:22:58
21	size, shape and layout of the cabinet is, the	10:23:01
22	cabinet frame is.	10:23:04
23	A. Only if I look at the different	10:23:06
24	pictures. I think we're showing some pictures at	10:23:08
25	the end that compare the -- that have some	10:23:11



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1	CHG machines, how would they look.	10:29:26
2	Q. Okay.	10:29:31
3	A. And so the answers that we are	10:29:31
4	replicating here in term of as close as we can to	10:29:33
5	the real world is we're showing them five	10:29:38
6	machines. We're asking them to look at them the	10:29:41
7	way they would if they entered the casino before	10:29:43
8	they decide not to play, and then we ask them some	10:29:46
9	very simple questions in term of, you know, it	10:29:50
10	will give us indication are they confused or not	10:29:52
11	and what is the reason for the confusion.	10:29:56
12	Q. Do you know what the term "secondary	10:30:07
13	meaning" is?	10:30:08
14	A. Yes.	10:30:10
15	Q. Did your survey test for secondary	10:30:11
16	meaning?	10:30:14
17	A. No. But in my report, the second part	10:30:14
18	of my report, I'm addressing, you know, basically	10:30:18
19	the data that I've seen that would suggest that	10:30:22
20	the -- that the VGT does have a secondary meaning.	10:30:26
21	Q. All right. So it's your opinion that	10:30:28
22	VGT's trade dress has a secondary meaning?	10:30:31
23	A. Yes, based on the eight reasons or so	10:30:35
24	that I outlined in my report.	10:30:37
25	Q. All right.	10:30:40

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1	A. But it's not based on the survey and	10:30:40
2	it's not -- and my survey was not a secondary	10:30:42
3	meaning survey.	10:30:45
4	Q. Okay. So it's based on the materials	10:30:46
5	provided to you by VGT's attorneys, correct?	10:30:48
6	A. Right, they're the source of all the	10:30:52
7	material that I reviewed.	10:30:54
8	Q. Do you think that the lack of	10:30:59
9	consistency in the cabinet utilized by VGT, the	10:31:01
10	difference sizes and layouts of the machines	10:31:05
11	within the same casino is a factor to be	10:31:08
12	considered in whether a particular trade dress has	10:31:12
13	developed a secondary meaning?	10:31:15
14	MR. ROMAN: Object to the form.	10:31:17
15	A. The critical question would be basically	10:31:20
16	in terms of how it's being conceived by the	10:31:22
17	consumers and to what extent it changes consumers'	10:31:26
18	perception of the trade dress involved.	10:31:29
19	Q. So if a player has an image of a VGT	10:31:31
20	game, let's use your Mr. Money Bags, for example,	10:31:35
21	and they picture it and there's five different	10:31:38
22	versions of it in that casino, do you think that	10:31:41
23	impacts his perception of whether there's	10:31:45
24	secondary meaning?	10:31:47
25	A. We don't know. It's an empirical	10:31:49



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1	Judicial Center?	11:15:02
2	A. Yes.	11:15:04
3	Q. And do you agree with Professor McCarthy	11:15:06
4	that a professional survey expert will use	11:15:09
5	standard procedures to ensure that the survey was	11:15:12
6	administered in such as manner as to minimize	11:15:14
7	error and bias?	11:15:17
8	A. Yeah, the critical question is always	11:15:19
9	what is standard procedures.	11:15:20
10	Q. Well, that was my question a minute ago.	11:15:22
11	And are you able to tell me what the standard	11:15:26
12	procedures are?	11:15:27
13	A. I think the standard procedure for a	11:15:30
14	survey in general, yes, absolutely. That was what	11:15:31
15	was done in my study.	11:15:34
16	Q. Okay.	11:15:36
17	A. Select, basically, the appropriate	11:15:36
18	design, select the right universe, the right	11:15:37
19	sample, have unbiased questions, you know,	11:15:41
20	basically, analyze the data correctly, and I think	11:15:44
21	that's what we exactly done in my study.	11:15:47
22	Q. All right. So is it your belief that	11:15:50
23	you used standard procedures to ensure that the	11:15:52
24	survey was conducted in this case and administered	11:15:55
25	in a manner to minimize error and bias?	11:15:59

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1	A. Yes.	11:16:02
2	Q. And what procedures did you use?	11:16:02
3	A. Everything that I just told you, the	11:16:05
4	entire research design, everything about my study.	11:16:06
5	Every single aspect of my study follows the right,	11:16:09
6	correct research procedures.	11:16:13
7	Q. And is it your opinion that the survey	11:16:15
8	you conducted in this case was conducted in	11:16:17
9	unbiased fashion?	11:16:20
10	A. Yes.	11:16:22
11	Q. Is it your opinion that a Squirt survey	11:16:23
12	should accurately display the stimuli being	11:16:25
13	compared as they exist in the marketplace?	11:16:28
14	A. As close as you can.	11:16:30
15	Q. Is it your opinion that a Squirt survey	11:16:32
16	should attempt to replicate the stimuli in a	11:16:35
17	manner in which consumers would encounter the	11:16:38
18	parties' products in the marketplace?	11:16:40
19	A. As close as you can.	11:16:44
20	Q. Is it your opinion that a survey should	11:16:45
21	avoid asking leading questions?	11:16:46
22	A. Yes.	11:16:48
23	Q. Is it your opinion that a survey should	11:16:49
24	be carefully designed to avoid errors?	11:16:50
25	A. Yes.	11:16:54

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1	there was great concerns to what extent internet	11:28:17
2	panel would represent the general population.	11:28:21
3	Concern is still there. I doubt that you will	11:28:25
4	join the internet panel. I know I will not join	11:28:28
5	an internet panel. So people like us may not be	11:28:32
6	represented here.	11:28:36
7	But the reality the ease of getting	11:28:36
8	the respondents, cost, time and basically a lot of	11:28:39
9	experience that results from internet panel can be	11:28:45
10	projected to the population have led in the last	11:28:49
11	five, seven years to a general acceptability of	11:28:53
12	internet panels, and courts are accepting them now	11:28:57
13	as well.	11:29:00
14	Q. Sure. There's alternatives to internet	11:29:01
15	panels, though, right?	11:29:04
16	A. Yeah.	11:29:05
17	Q. Have you heard of intercept -- intercept	11:29:05
18	study?	11:29:08
19	A. This was the old approach.	11:29:09
20	Q. That was the old approach. And in fact,	11:29:11
21	the studies that you relied upon from -- that VGT	11:29:11
22	had conducted by Mosak and the other companies,	11:29:14
23	several of them involved casino intercept studies?	11:29:16
24	A. Correct.	11:29:25
25	Q. You chose not to do a casino intercept	11:29:25

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1	study, correct?	11:29:28
2	A. Correct.	11:29:29
3	Q. Even though that had been done by VGT in	11:29:29
4	the past?	11:29:31
5	A. I was told for this particular study and	11:29:31
6	the design that I wanted, you know, the internet	11:29:34
7	panel was the best way to collect data.	11:29:38
8	Q. If you had done an intercept study in	11:29:41
9	actual independent an gaming casinos in Oklahoma	11:29:44
10	with actual independent an gaming casino patrons	11:29:49
11	in the actual environment of Indian casino, do you	11:29:54
12	believe would you have been able to have a more	11:30:08
13	accurate Squirt survey?	11:30:09
14	A. I have no idea if you get more accurate.	11:30:17
15	I doubt it would be more accurate whether you get	11:30:19
16	the same results or not. It's an empirical	11:30:22
17	question. I don't know. I have no reason to	11:30:25
18	believe that the results would be different.	11:30:28
19	It might be a little different than	11:30:30
20	magnitude, but I believe that the general	11:30:31
21	direction may have -- probably will come	11:30:31
22	regardless what method you would use. The big	11:30:34
23	challenge would be get permission from the casinos	11:30:38
24	to interview there.	11:30:41
25	Q. Well, VGT has done that before, correct?	11:30:42

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1	the morning, but there are no people in the	11:31:40
2	casino.	11:31:45
3	Q. Can you read back my question, please.	11:31:57
4	(Whereupon, a portion of the transcript	11:31:58
5	was read for the record.)	11:31:58
6	Q. Please answer the question, sir.	11:31:59
7	A. No, because they did not -- I don't know	11:32:02
8	if they tried or not. I would assume they did not	11:32:03
9	try to do it because they could not even get them	11:32:06
10	to let us take videos in the casinos.	11:32:09
11	Q. But you don't know one way or the other?	11:32:11
12	A. I would assume that they did not try	11:32:13
13	because -- but I don't know. I would assume they	11:32:15
14	would not because they could not get permission to	11:32:18
15	taking simple videos.	11:32:20
16	Q. Who decided on the size of the sample to	11:32:22
17	use in this study?	11:32:24
18	A. I basically decided on 400 plus, so	11:32:26
19	somewhere around 400 people.	11:32:29
20	Q. And have you analyzed whether the	11:32:31
21	demographics of the participant panels that	11:32:33
22	Research Now used are consistent with the	11:32:38
23	demographics of casino players in Oklahoma?	11:32:41
24	A. I did not have data of the demographics	11:32:46
25	of casino players in Oklahoma, so I could not	11:32:57



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1	A. The most prominent is the way to select	11:50:40
2	the stimuli.	11:50:42
3	Q. Why?	11:50:43
4	A. Why not? What other criteria would you	11:50:44
5	have? Random, random is not as good.	11:50:46
6	You think of all the possible	11:50:51
7	options for selecting stimuli. Number one, you	11:50:54
8	know, you cannot basically do a study on all the	11:50:57
9	items in the product line. That's crazy. You	11:50:59
10	will never find out enough people -- look how many	11:51:02
11	people we had to interview to get 446 people.	11:51:06
12	If you want to use more than one,	11:51:08
13	you have to replicate it. You know, kind of is	11:51:10
14	this feasible, no, it's not. It's not feasible	11:51:13
15	economically or time-wise or even finding enough	11:51:17
16	people to do it.	11:51:22
17	So then you stuck with the	11:51:24
18	question, okay, which of these machines. So you	11:51:24
19	have two options. One is random. Random is not	11:51:25
20	good because it's got to be something that is	11:51:28
21	totally, you know, atypical of the machines. And	11:51:32
22	the only other criteria for selecting	11:51:34
23	scientifically a representative item from the line	11:51:36
24	would be pick up the best-selling machine.	11:51:40
25	Q. So you deliberately chose to use a	11:51:42

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1	machine that would most likely be familiar to the	11:51:45
2	respondent?	11:51:48
3	A. Right. And the same thing for CHG would	11:51:50
4	then be the same thing because we matched it	11:51:52
5	against a theme.	11:51:58
6	Q. Sure. Did you use the most popular	11:52:00
7	Konami, Scientific Games or IGT machines?	11:52:03
8	A. Again, we went over a few times today,	11:52:08
9	we basically selected them because they are	11:52:10
10	available in the same casino. The constrain was	11:52:14
11	which machines are available in the same casino.	11:52:18
12	Q. I thought you said the issue was which	11:52:20
13	one was most popular --	11:52:22
14	A. But --	11:52:25
15	Q. -- because that would make the most	11:52:25
16	sense?	11:52:27
17	A. For the anchor. For the anchor. But	11:52:27
18	then once I selected the anchor for the K, then	11:52:30
19	both the selection of the CHG to match basically	11:52:36
20	the same theme and the same approach. And then to	11:52:40
21	select the three other controls, the criteria was,	11:52:43
22	and we repeat it a few times, is to make sure that	11:52:46
23	they are available in the same casino because we	11:52:51
24	wanted to represent a realistic kind of casino	11:52:52
25	environment, and then which one we could get the	11:52:56

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1	pictures for.	11:53:01
2	Q. All right. You stated that you were	11:53:02
3	focusing in on the theme of money or wealth,	11:53:04
4	correct?	11:53:09
5	A. Yes.	11:53:09
6	Q. And you deliberately chose not to use	11:53:09
7	any of the other wealth-themed games VGT makes	11:53:12
8	that are referenced in the amended complaint. If	11:53:15
9	you want to look at paragraph 19, which VGT claims	11:53:18
10	to be infringed in this action such as Crazy	11:53:21
11	Billions, Gems and Jewels, Mr. Millionaire,	11:53:24
12	Counting Cash or Diamond Fever, right?	11:53:27
13	A. Yes, because the best-selling machine is	11:53:31
14	the one I selected.	11:53:34
15	Q. And you chose to use the drawing of New	11:53:39
16	Money as the sample for a Castle Hill game instead	11:53:40
17	of any of the other numerous titles Castle Hill	11:53:44
18	offers in its EGMs, correct?	11:53:46
19	A. Correct.	11:53:48
20	Q. Why did you choose New Money?	11:53:49
21	A. Because I thought based on the -- if you	11:53:53
22	go back, I think that's the one also mentioned in	11:53:57
23	the complaint and was the most similar to the VGT.	11:53:59
24	Q. Well, let's look at the complaint, the	11:54:02
25	amended complaint, which is Exhibit --	11:54:11

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1	Money says nothing about whether or not players	11:55:40
2	would be confused by if they were playing Nugget	11:55:44
3	Mountain thinking they were actually playing Mr.	11:55:48
4	Money Bags, correct?	11:55:51
5	A. No. You're now assuming that you cannot	11:55:55
6	project the results to -- from one product to the	11:55:56
7	rest of the line.	11:55:56
8	Q. That's what I'm asking.	11:55:59
9	A. No, you cannot -- cannot assume it or	11:56:01
10	not.	11:56:01
11	Q. So your analysis is limited to Mr. Money	11:56:03
12	Bags as opposed to Castle Hill's New Money?	11:56:04
13	A. No. You misinterpreted my response.	11:56:08
14	Q. Okay.	11:56:10
15	A. The response is the study focuses on	11:56:11
16	Mr. Money Bag and the New Money and that's where I	11:56:13
17	had direct evidence. I'm addressing explicitly in	11:56:19
18	my reply why I believe that we can actually	11:56:24
19	project the results beyond the single stimuli to	11:56:28
20	the entire line because of the great similarity	11:56:32
21	that you have among the various products in the	11:56:36
22	line, both the VGT and the CHG.	11:56:41
23	Q. Yeah. But you're not testing VGT versus	11:56:45
24	CHG, you're testing particular game titles of	11:56:48
25	particular artwork against each other, correct?	11:56:52

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1	A. Correct. And the question then is are	11:56:55
2	the conclusions of the study limited to this	11:56:59
3	particular pair in the context of the specific	11:57:02
4	three controls that we use, or can you generalize.	11:57:05
5	So question number one is what can	11:57:07
6	you say about this pair. The answer is very	11:57:09
7	strong findings about confusion that we --	11:57:12
8	Q. We'll get to that.	11:57:16
9	MR. ROMAN: Wait, he's --	11:57:19
10	MR. PLATT: It's not responsive.	11:57:21
11	So let's --	11:57:22
12	MR. ROMAN: Let the witness finish	11:57:22
13	his response.	11:57:22
14	MR. PLATT: Can you read back my	11:57:22
15	questions, please.	11:57:22
16	(Whereupon, a portion of the transcript	11:57:22
17	was read for the record.)	11:57:22
18	CONTINUED EXAMINATION BY MR. PLATT:	11:57:22
19	Q. That's a yes or no question, sir.	11:57:22
20	A. I'm testing that these two, but it does	11:57:44
21	not mean that you cannot project to the rest of	11:57:46
22	the line.	11:57:48
23	Q. All right. But you conscientiously	11:57:48
24	picked New Money to compare it to Mr. Money Bags	11:57:51
25	and selected the three other games, one	11:57:54

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1	MR. ROMAN: What page are you on?	12:03:53
2	Q. I'm just looking at the stimuli on page	12:03:55
3	seven.	12:03:57
4	MR. ROMAN: Okay. I thought you	12:03:57
5	were reading off of something. Oh, you're	12:03:58
6	reading off your notes.	12:04:00
7	Q. I'm reading off my notes.	12:04:02
8	MR. ROMAN: Okay. Sorry.	12:04:03
9	Q. You know, maybe we ought -- would it be	12:04:03
10	easier if I wrote that down?	12:04:04
11	A. No, that's fine.	12:04:06
12	Q. You followed it?	12:04:07
13	A. I followed it.	12:04:08
14	Q. All right. So there's only one	12:04:08
15	permutation of the five possibilities where	12:04:11
16	Mr. Money Bags is not shown directly next to New	12:04:13
17	Money, correct?	12:04:15
18	A. Yeah.	12:04:18
19	Q. So that would be 80 percent of the time,	12:04:19
20	correct?	12:04:26
21	A. Sounds like a reasonable calculation.	12:04:28
22	Q. I'm a lawyer, not a mathematician, but	12:04:31
23	just checking. You have the Stanford Ph.D.	12:04:33
24	So 80 percent of the time	12:04:36
25	respondents compared the drawings of Mr. Money	12:04:38

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1	people, and then you have basically the others.	12:09:33
2	And control will be the 77 people. So if you look	12:09:35
3	at -- basically, these are the columns.	12:09:40
4	Q. I understand.	12:09:42
5	A. Then it shows you basically how many	12:09:43
6	people received each one of those patterns.	12:09:48
7	Q. Okay. Well, let's focus on the K and M	12:09:50
8	only, column C on table 39. That's the 183, which	12:09:54
9	you said on figure 3A appears, that's the first	12:09:58
10	column, the test, right?	12:10:03
11	A. Right.	12:10:05
12	Q. All right. Those are people that in	12:10:05
13	that -- in your survey only identified Castle	12:10:07
14	Hill's New Money with VGT's Mr. Money Bags?	12:10:13
15	A. Correct.	12:10:20
16	Q. No others, correct?	12:10:20
17	A. Correct.	12:10:21
18	Q. Okay. So if we look on table 39, right?	12:10:21
19	A. Yeah.	12:10:25
20	Q. If you look at for that column, column	12:10:26
21	C, right, the first one is KMPST, correct; do you	12:10:31
22	see that?	12:10:35
23	A. Right.	12:10:36
24	Q. And 38 or 20.8 percent respondents did	12:10:36
25	that, correct?	12:10:40

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1	A. Right.	12:10:42
2	Q. And so MPSTK in that order for column C,	12:10:42
3	K and M only, is 15.8 percent, correct?	12:10:47
4	A. Right.	12:10:52
5	Q. And the next one is PSTKM, 37, which is	12:10:52
6	20.2 percent, right?	12:10:58
7	A. Yes.	12:11:00
8	Q. The next one STKMP, it's 41, which is	12:11:00
9	22.4 percent?	12:11:01
10	A. Right.	12:11:03
11	Q. And the last one TKMPS --	12:11:03
12	A. Right.	12:11:07
13	Q. -- is 38 or 20.8 percent?	12:11:07
14	A. Right.	12:11:10
15	Q. Like I used to do with my kids, we can	12:11:11
16	say one of these things is not like the other,	12:11:13
17	right?	12:11:16
18	They're all approximately 20 to	12:11:16
19	22 percent, except for MPSTK, which is	12:11:18
20	15.8 percent, correct?	12:11:22
21	A. Well, but basically, the difference is	12:11:24
22	not that significant. Basically, all of them,	12:11:26
23	it's close between 16 and 22, and --	12:11:28
24	Q. Well, all of them are between 20 and 22	12:11:32
25	except for that particular one which is 15.8,	12:11:36



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1	correct?	12:11:39
2	A. I doubt -- this is insignificant. It's	12:11:39
3	not a big difference.	12:11:42
4	Q. Okay. Well, it's a 20 percent	12:11:44
5	difference, isn't it?	12:11:45
6	A. Yeah. But the better test of this if	12:11:46
7	there is bias or not is to ask how many of the	12:11:50
8	other pairs that appear together, how many of	12:11:52
9	them -- not in this data, but how many people	12:11:56
10	selected M and P, how many people selected P and	12:11:59
11	S, how many people selected S and T, all the ones	12:12:01
12	which are close to each other.	12:12:06
13	Because you also have a situation	12:12:07
14	that M and P appears basically in most of them	12:12:10
15	together. And if you look at this, if you look at	12:12:13
16	table two of my report, you'll find out that	12:12:14
17	basically in terms of the pairs there is no one	12:12:19
18	that comes even close to the level of repairs that	12:12:23
19	you have -- this is figure 2A on page 20.	12:12:28
20	You know, you have basically	12:12:33
21	56.6 percent selected K and M. The closest to it	12:12:34
22	is S and T was 21 percent and everything else is	12:12:38
23	below it. Even if you take all the other ones	12:12:43
24	together combined, it's less than 56.6 percent.	12:12:45
25	Q. All right. Just to close the little bit	12:12:50

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1	of gap here, so on table 39, would you agree or	12:12:52
2	not agree that there is an approximately	12:12:55
3	25 percent difference in the survey results	12:12:57
4	finding confusion between Mr. Money Bags and New	12:13:01
5	Money between the one where the individual	12:13:04
6	machines are not next to each other and the ones	12:13:09
7	where they are?	12:13:12
8	MR. ROMAN: Object to the form.	12:13:13
9	A. I think that by stating it as a	12:13:15
10	percentage difference between the two you are	12:13:17
11	exaggerating the difference, because, basically,	12:13:21
12	if you look at the entire definition between 15.8	12:13:24
13	and 22 -- 22.4, it's within the range. It's	12:13:24
14	hardly significant, so I --	12:13:29
15	Q. It's a 25 percent difference, though,	12:13:30
16	isn't it?	12:13:32
17	MR. ROMAN: Object to the form.	12:13:33
18	A. But look at -- look at this in the	12:13:34
19	context. Look in the context of the --	12:13:36
20	Q. I'm asking you specifically on the data	12:13:37
21	there, that's yes or no, is that a 25 percent or	12:13:38
22	more difference?	12:13:42
23	A. I didn't calculate. I'll trust your	12:13:43
24	calculation.	12:13:45
25	Q. Thank you.	12:13:46

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1	Q. What do you mean by a zoom feature?	01:40:01
2	A. That you can basically enlarge a section	01:40:04
3	to see it larger.	01:40:06
4	Q. Okay.	01:40:08
5	A. It gets it back to normal.	01:40:08
6	Q. So if you clicked on it, you got a	01:40:10
7	bigger picture?	01:40:13
8	A. Correct.	01:40:14
9	Q. It wasn't like you can -- I don't know	01:40:14
10	if you do online shopping. If you want to look at	01:40:17
11	something when you're online shopping, you can	01:40:19
12	actually zoom into fine detail of specific parts	01:40:21
13	of a picture. It wasn't that, you just get a	01:40:22
14	slightly bigger picture, correct?	01:40:22
15	A. But you could focus on a specific part	01:40:26
16	of the picture.	01:40:29
17	Q. I'm sorry?	01:40:30
18	A. You could focus on part -- parts of the	01:40:30
19	picture.	01:40:32
20	Q. Have you taken this survey, sir?	01:40:33
21	A. I did.	01:40:35
22	Q. And it's your testimony that you can	01:40:36
23	zoom in and focus on a specific part of this	01:40:37
24	picture?	01:40:40
25	A. I did not do it. I did basically a full	01:40:40

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1	adjustment of enlarging it.	01:40:45
2	Q. All right.	01:40:47
3	A. I did not do it. But my understanding	01:40:47
4	is that the technology that Research Now allows	01:40:49
5	you to select specific parts of the picture that	01:40:52
6	you want to do it.	01:40:52
7	Q. Well, I would agree with you that	01:40:55
8	technology allows it. What I disagree with you is	01:40:57
9	that your survey allows you to do that, but we'll	01:41:00
10	get back to that later.	01:41:04
11	On page nine of your report, you	01:41:06
12	state that -- let me see where it is -- the main	01:41:11
13	question you state, the main questionnaire	01:41:19
14	states -- and these are what the actual players	01:41:22
15	are told, right?	01:41:24
16	A. Right.	01:41:26
17	Q. It says you can zoom in to see any	01:41:26
18	element of the machine better. That's what you	01:41:29
19	were just saying, right?	01:41:31
20	A. Right.	01:41:33
21	Q. And it's your testimony that's actually	01:41:33
22	true?	01:41:36
23	A. My understanding is that the -- the	01:41:36
24	questionnaire as implemented allowed them to do	01:41:37
25	it.	01:41:40

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1	Q. Did you review the verbatim responses in	01:41:42
2	this case?	01:41:44
3	A. Yes.	01:41:46
4	Q. And part of your survey, you asked for	01:41:46
5	feedback regarding the survey --	01:42:26
6	A. Right.	01:42:28
7	Q. -- afterwards?	01:42:28
8	Turn to table 38, on page 126 of	01:42:30
9	the tables.	01:42:35
10	MR. ROMAN: What page?	01:42:36
11	Q. 126?	01:42:36
12	A. The tables. Computer tabulation.	01:42:49
13	Q. So it's table 38.	01:43:07
14	A. Correct.	01:43:13
15	Q. The question on this table that was	01:43:13
16	asked do you have any feedback about this survey	01:43:14
17	and your experience taking it.	01:43:17
18	A. This was the last question of the	01:43:21
19	survey.	01:43:24
20	Q. Sure. And one of the things people said	01:43:25
21	was need more detail, zoom in on pictures to	01:43:26
22	answer, correct?	01:43:29
23	A. Yeah, there were seven people that	01:43:32
24	mentioned it.	01:43:34
25	Q. So that was an issue raised?	01:43:41

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1	A. By seven people.	01:43:43
2	Q. By seven people. What about in the	01:43:54
3	verbatim responses?	01:43:55
4	A. What is the question about it, what	01:43:59
5	about it?	01:44:01
6	Q. Did you review the verbatim responses of	01:44:03
7	those seven people to see if they had additional	01:44:05
8	concerns about the zoom feature?	01:44:13
9	A. No, I did not follow on this specific	01:44:16
10	seven people. I went over all -- I went over all	01:44:20
11	the verbatims.	01:44:21
12	Q. Okay. And did you notice other	01:44:24
13	people -- that people were mentioning the problem	01:44:25
14	with the zoom feature within the other verbatim	01:44:28
15	responses?	01:44:31
16	A. I don't recall any.	01:44:31
17	Q. Let's look at a couple. If you can turn	01:44:45
18	to page 21 of the verbatim responses, respondent	01:44:48
19	2351.	01:44:54
20	A. What's the number?	01:44:57
21	Q. 2351, page 21.	01:44:58
22	A. Page 21?	01:45:07
23	Q. Yes.	01:45:08
24	A. I have page 20.	01:45:33
25	Q. Specifically, response D3, very	01:45:33

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1	frustrated as zoom didn't get me enough details to	01:45:35
2	tell you what you needed to know.	01:45:38
3	A. So this would be one of the seven	01:45:41
4	people.	01:45:42
5	Q. Presumably.	01:45:43
6	A. It has to be because otherwise it would	01:45:45
7	have been listed in -- in part of the response in	01:45:47
8	the previous table we looked at.	01:45:51
9	Q. All right. And then again for	01:45:54
10	respondent 5219, page 57.	01:45:55
11	A. 5219?	01:46:02
12	Q. Uh-hum.	01:46:03
13	A. What page?	01:46:06
14	Q. 57.	01:46:06
15	A. So this person says you could make the	01:46:25
16	zoom even more refined or more zoomed in.	01:46:28
17	Q. So they weren't able to zoom in on the	01:46:36
18	features they wanted like you said?	01:46:38
19	A. No, we don't know it. All we know that	01:46:40
20	it says or she says you could make the zoom even	01:46:42
21	more refined or more zoomed in. It doesn't say	01:46:47
22	anything that they could not do it.	01:46:51
23	Q. Were all the machines that you showed	01:46:53
24	shown in the same resolution?	01:46:54
25	A. When they looked at them at the five,	01:46:55

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1	A. Correct.	01:50:17
2	Q. Just so we understand what that means,	01:50:17
3	only one of the three controls you used had the	01:50:19
4	same resolution when respondents tried to zoom in	01:50:21
5	on them?	01:50:25
6	A. Correct.	01:50:25
7	MR. PLATT: I'm about to shift	01:50:47
8	gears, why don't we take a short break.	01:50:49
9	THE VIDEOGRAPHER: Off the record	01:50:51
10	at 11:50.	01:50:52
11	(Recess.)	01:50:53
12	THE VIDEOGRAPHER: Back on the	02:03:11
13	record at 2:02.	02:03:12
14	BY MR. PLATT:	02:03:16
15	Q. Are you aware of any scholarly opinions	02:03:16
16	or cases that stand for the proposition that when	02:03:19
17	conducting a Squirt survey you should use the most	02:03:25
18	widely recognized version of a product in	02:03:32
19	conducting a test?	02:03:38
20	A. Nothing comes to mind.	02:03:45
21	Q. Let's turn to page eight of your	02:03:46
22	survey -- of your report.	02:04:04
23	A. Yeah.	02:04:06
24	Q. You list the screening questions that	02:04:13
25	were given to the respondents, right? We've been	02:04:16



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1	correct. You cannot go more than once.	02:38:47
2	Q. Okay. So, again, we're back to we	02:38:49
3	qualified. On the next screen, we'll show you	02:38:54
4	five gaming machines that you may see in an	02:38:56
5	Oklahoma casino.	02:38:58
6	A. Right.	02:39:01
7	Q. And the order that came up is the KMPST.	02:39:02
8	That's the same order that's in the report,	02:39:08
9	correct?	02:39:13
10	A. Correct.	02:39:15
11	Q. All right. So let try the zoom feature.	02:39:16
12	How do you zoom?	02:39:23
13	So you've clicked on it and it's an	02:39:28
14	enlarged picture, right?	02:39:31
15	A. An enlarged picture, right.	02:39:35
16	Q. Can you zoom in on that to show any of	02:39:42
17	the detail?	02:39:45
18	A. Apparently, not.	02:39:46
19	Q. So you have an enlarged picture, and in	02:39:48
20	this picture, you can see the name of the game and	02:39:49
21	the numbers on the pay tables; is that correct?	02:39:52
22	A. Yes.	02:39:57
23	Q. And you can see that this is a bingo	02:39:57
24	card?	02:39:59
25	A. Yes.	02:40:00

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1	Q.	And VGT's Mr. Money Bags is K in the	02:47:01
2		second position and Castle Hill's New Money game	02:47:08
3		is in M on the --	02:47:10
4	A.	Third position.	02:47:15
5	Q.	-- third position.	02:47:16
6		Enlarge T.	02:47:21
7	A.	(Witness so doing.)	02:47:28
8	Q.	Okay. Now close that.	02:47:28
9	A.	(Witness so doing.)	02:47:36
10	Q.	Now enlarge K.	02:47:36
11	A.	(Witness so doing.)	02:47:37
12	Q.	That's Mr. Money Bags, that's the	02:47:37
13		enlarged view of Mr. Money Bags, correct?	02:47:40
14	A.	Uh-hum.	02:47:43
15	Q.	Okay. Close that.	02:47:43
16	A.	(Witness so doing.)	02:47:44
17	Q.	Now enlarge M, which is the Castle	02:47:47
18		Hill's New Money.	02:47:48
19	A.	(Witness so doing.)	02:47:50
20	Q.	What do you see?	02:47:52
21	A.	K.	02:48:01
22	Q.	For the record, a picture of VGT's	02:48:02
23		Mr. Money Bags came in -- up when Dr. Wind clicked	02:48:06
24		on New Money, which has now happened twice.	02:48:10
25	A.	This is strange.	02:48:17

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1	Q. It is strange. And I'll represent to	02:48:18
2	you that I've done this, I don't know, a couple of	02:48:20
3	dozen times now. Every single time that the array	02:48:22
4	comes up in that order of TKMPS, that same mistake	02:48:26
5	happens. Were you aware of that before today?	02:48:36
6	A. No. And I'm not sure whether this	02:48:38
7	actually happened in the real stimuli that	02:48:40
8	consumers saw. We know we're working on a test	02:48:45
9	stimuli here.	02:48:48
10	Q. So you don't know one way or the other?	02:48:49
11	A. I find it very strange, totally	02:48:52
12	surprised, to see something like this. Never	02:48:54
13	happened to me before. And it might be a glitch	02:48:56
14	in the test item we have here. We can find out.	02:49:01
15	I definitely have to find out with Research Now	02:49:07
16	what happened.	02:49:10
17	Q. Sure.	02:49:11
18	A. Give me only the sequence so I'll be	02:49:12
19	able to check with them?	02:49:14
20	Q. TKMPS. But I think we can answer that	02:49:15
21	question here and we'll get to that. Thank you	02:49:22
22	for your patience on that.	02:49:36
23	Would you agree that that's a	02:49:47
24	serious error, if in fact it happened, on the	02:49:49
25	survey that the participants took?	02:49:52

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1	A.	If it happened, it's an error. We have	02:49:56
2		to find out exactly how many people were subject	02:49:58
3		to this. We have to then probably remove these	02:50:02
4		people from the survey.	02:50:05
5	Q.	This error affected 20 percent of your	02:50:11
6		participants, didn't it?	02:50:13
7	A.	It affected only those who clicked to	02:50:17
8		enlarge it, so it's a subset of the 20 percent.	02:50:21
9	Q.	Do you know if that was -- this problem	02:50:37
10		was mentioned in the verbatim responses?	02:50:40
11	A.	I don't recall seeing it. Otherwise, I	02:50:48
12		would have noticed it when I went over the	02:50:49
13		verbatim.	02:50:52
14	Q.	Okay. Let's look at, hold on,	02:50:52
15		respondent 6383 at page 106 of the verbatim	02:51:04
16		responses.	02:51:10
17		MR. ROMAN: What number?	02:51:20
18	Q.	6383 at page 106 of the verbatim	02:51:21
19		responses.	02:51:26
20		Are you there, sir?	02:51:37
21	A.	Yes.	02:51:38
22	Q.	This respondent had based on line D	02:51:38
23		rotate, it says 05 TKMPS?	02:51:45
24	A.	Yeah.	02:51:49
25	Q.	So that's the suspect array, correct?	02:51:50

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1	A. Yeah.	02:51:52
2	Q. And then he states or she states, let's	02:51:53
3	see, question Q1BB, when I clicked on them both	02:51:54
4	had similar features including the words "money	02:52:03
5	bags"; do you see that?	02:52:05
6	A. Yeah.	02:52:07
7	Q. And Castle Hill's New Money for all the	02:52:09
8	alleged similarities certainly doesn't contain the	02:52:13
9	words "money bags", does it?	02:52:17
10	A. Correct.	02:52:19
11	Q. All right. If you can look on page 13	02:52:24
12	of the verbatim responses for number 1356.	02:52:26
13	A. Thirteen?	02:52:30
14	Q. Fifty-six.	02:52:34
15	MR. ROMAN: Is it page 13 of the	02:52:37
16	responses?	02:52:38
17	Q. I believe so.	02:52:46
18	So 1356 says -- well, 1356 has the	02:52:56
19	array TKMPS, the suspect array, correct?	02:53:02
20	A. Yes.	02:53:07
21	Q. And this in his verbatim or her	02:53:09
22	verbatim on question Q2B, the name of the game is	02:53:15
23	the same, do you see that, and the size, shape and	02:53:20
24	machine are very similar?	02:53:25
25	A. Yeah, you have to read the whole	02:53:28

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1	response.	02:53:29
2	Q. Let's look at the first response,	02:53:30
3	though, the name of the game is the same.	02:53:30
4	We can agree that the names of the	02:53:33
5	game are not actually the same unless you enlarge	02:53:35
6	it and you see the same name as the wrong machine,	02:53:39
7	correct?	02:53:43
8	A. Right. But he answered also -- this is	02:53:43
9	not the only answer he gave. This person said	02:53:46
10	they have the same structure, shape and look to be	02:53:50
11	identical, other than the sign on the top, even	02:53:52
12	the same name.	02:53:54
13	Q. All right. So that's not surprising if	02:53:56
14	he's looking at the same machine, is it?	02:53:58
15	A. Right, I never -- when I looked at this,	02:54:00
16	I never even interpreted this as basically they	02:54:02
17	saw a different stimuli. I just --	02:54:04
18	Q. All right.	02:54:08
19	A. -- thought --	02:54:08
20	Q. -- do this deliberately, sir.	02:54:08
21	And if you can look at 5219 on page	02:54:09
22	57.	02:54:13
23	A. 5219?	02:54:14
24	Q. On page 57. 5219, again, is the TKMPS,	02:54:17
25	correct?	02:54:43

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1	Q. Okay.	02:57:52
2	A. And then see what I have.	02:57:52
3	Q. I thought that was my understanding. So	02:57:54
4	my question is, do you think that the information	02:57:55
5	you have in this report here, these results, are	02:57:58
6	still valid without doing that analysis?	02:58:02
7	A. I wouldn't feel comfortable concluding	02:58:05
8	without doing this analysis.	02:58:08
9	But I think given the magnitude of	02:58:09
10	the confusion we have here of 60 -- you know, if	02:58:11
11	you look at table 1B, you know, 64.8 percent, and	02:58:16
12	even when you look at the -- the table two where,	02:58:21
13	basically, you have 56 percent, you can link	02:58:27
14	together K and M. And when you look at the	02:58:32
15	magnitude of figure three with 51 percent confused	02:58:35
16	primarily due to trade dress or trademark, I think	02:58:39
17	that the general conclusions probably will be	02:58:48
18	similar.	02:58:50
19	But I don't feel comfortable	02:58:51
20	drawing any conclusion at this stage until we redo	02:58:53
21	the analysis.	02:58:58
22	MR. PLATT: Let's take a break.	02:58:59
23	THE VIDEOGRAPHER: Going off the	02:59:00
24	record at 2:58.	02:59:01
25	(Recess.)	02:59:04

Transcript of Dr. Yoram (Jerry) Wind  
Conducted on September 20, 2018

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1	THE VIDEOGRAPHER: Back on the	03:08:30
2	record 3:07.	03:08:30
3	CONTINUED EXAMINATION BY MR. PLATT:	03:08:31
4	Q. Back looking at the picture of the array	03:08:37
5	on page seven of your report, K, the VGT Mr. Money	03:08:42
6	Bags, and M, the Castle Hill New Money game, and	03:08:55
7	the IGT game are all forward-facing pictures,	03:09:00
8	correct?	03:09:04
9	A. Yes.	03:09:05
10	Q. And two out of the three controls are	03:09:06
11	angled so that you can see the depth of the	03:09:09
12	machine, correct?	03:09:11
13	A. Yeah.	03:09:15
14	Q. Is that correct?	03:09:15
15	A. Yeah.	03:09:15
16	Q. Why did you pick two pictures that were	03:09:17
17	angled as controls?	03:09:19
18	A. Those are the only ones we could find.	03:09:23
19	We could not find the five pictures, all of them,	03:09:26
20	facing the same way.	03:09:29
21	Q. Well, if you look at Exhibit 4 to the	03:09:47
22	First Amended Complaint, you have a picture of	03:09:49
23	Mr. Money Bags on an angle, correct?	03:09:54
24	A. What -- what page are you on?	03:09:59
25	Q. Sure, page three of Exhibit 4 to the	03:10:00



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1	Q. Even though these pictures were	03:12:44
2	available and in fact included in the amended	03:12:45
3	complaint and the original complaint?	03:12:47
4	A. Correct.	03:12:50
5	Q. So you made a conscious decision to use	03:12:54
6	the front-on picture instead of the angle picture	03:12:56
7	that was available?	03:13:01
8	A. Well, my understanding is, basically, we	03:13:02
9	could not have used the picture from the complaint	03:13:04
10	as part of the stimuli.	03:13:09
11	Q. And why was that?	03:13:11
12	A. I was basically told that these are --	03:13:13
13	categorically, these are the only pictures that	03:13:17
14	are available showing the five machines selected	03:13:20
15	that we can use in the survey.	03:13:23
16	Q. Who told you that?	03:13:27
17	A. The lawyers, who were in touch with VGT,	03:13:29
18	were in touch with some casinos to try to get kind	03:13:38
19	of the ability to get pictures of the casinos. So	03:13:43
20	I did they did a lot of effort to try to get as	03:13:46
21	comfortable a set of pictures as possible.	03:13:51
22	Q. In addition to the survey, you have a	03:14:27
23	section of your report, well, on page 24 of the	03:14:33
24	report, you have a section D at the top,	03:14:47
25	conclusions of the study, and there's four	03:14:49

Transcript of Dr. Yoram (Jerry) Wind  
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1	A. A draft.	03:16:00
2	Q. Did you receive an outline of it from	03:16:01
3	Covington?	03:16:04
4	A. No.	03:16:06
5	Q. In your decision to use the various	03:16:10
6	materials that you cited here, did you rely upon	03:16:13
7	the instructions or advice of VGT's attorneys?	03:16:19
8	A. No. I discussed with them, obviously,	03:16:27
9	what other available data are there, which led to	03:16:28
10	identifying the five topics that I covered under	03:16:33
11	this -- this section.	03:16:39
12	Q. All right. In section A, the strength	03:16:41
13	of VGT -- VGT's EGM trademarks and trade dress,	03:16:43
14	you say the stronger the trademarks and trade	03:16:48
15	dress the more likely it is that emulation of	03:16:52
16	those trademarks and/or trade dress will lead to	03:16:54
17	confusion because consumers are more likely to	03:16:57
18	remember strong trademarks and trade dress and are	03:17:00
19	more likely to associate them with a wide arrange	03:17:02
20	of products, and you opine that the evidence	03:17:10
21	suggests that the trademarks and trade dress are	03:17:13
22	strong.	03:17:16
23	And, again, you did absolutely no	03:17:18
24	empirical analysis of the strength of VGT's	03:17:22
25	trademarks, correct?	03:17:27

Transcript of Dr. Yoram (Jerry) Wind  
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1	A. Correct, I did not design a study to	03:17:30
2	look at the strength of the trademark.	03:17:33
3	Q. And I believe you testified earlier that	03:17:34
4	your study did not analyze the strength of VGT's	03:17:36
5	trade dress either?	03:17:42
6	A. Well, it was not designed to test it	03:17:44
7	explicitly. But we talked about that you can	03:17:45
8	infer from the strong results on confusion, you	03:17:49
9	can infer as to the trademark and trade dress.	03:17:52
10	Q. But you cannot infer the trade dress and	03:17:57
11	any likelihood of confusion between the trade	03:18:00
12	dress of titles other than Mr. Money Bags and New	03:18:04
13	Money, correct?	03:18:07
14	A. Well, that's a separate topic. That's	03:18:11
15	my fifth topic, which is basically to what extent	03:18:13
16	you can project the results to the product lines	03:18:17
17	beyond the specific item tested.	03:18:19
18	Q. Right. But you're talking in general	03:18:22
19	here that VGT's trademarks and trade dress of	03:18:24
20	their VGT EGMs are strong.	03:18:27
21	A. Because the data that I'm reporting here	03:18:29
22	does not limit themselves to the stimuli used in my	03:18:31
23	study.	03:18:36
24	Q. Meaning the information that you relied	03:18:39
25	upon provided by VGT's attorneys to use?	03:18:41

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1	A. No.	03:21:10
2	Q. Have you ever served on a jury?	03:21:15
3	A. No.	03:21:17
4	Q. Do you believe you are qualified to	03:21:18
5	weigh the evidence in this case?	03:21:20
6	MR. ROMAN: Object to the form.	03:21:25
7	A. Not from a legal point of view.	03:21:26
8	Q. Yet you've gone through the evidence	03:21:28
9	presented to you from VGT's attorneys and based on	03:21:30
10	the evidence that you read, not subject to	03:21:35
11	cross-examination or counterpoint by Castle Hill,	03:21:38
12	you have determined that all of this supports the	03:21:44
13	conclusion that Castle Hill has deliberately	03:21:47
14	copied machines and infringed upon the trademarks	03:21:55
15	and trade dress of VGT; is that correct?	03:21:58
16	MR. ROMAN: Object to the form.	03:22:01
17	A. Some of the documents concerning the	03:22:03
18	copying was documents where, basically, Castle	03:22:06
19	Hill, you know, documents and deposition	03:22:11
20	testimony; furthermore, the whole procedure is	03:22:17
21	based on -- this is based on my best understanding	03:22:20
22	of the material I saw.	03:22:24
23	To the extent that there is	03:22:26
24	counterevidence for this, there are data that	03:22:28
25	shows, no, they did not copy, they did not intend	03:22:32

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1	A. No. Nor do I have any reason to suspect	03:48:27
2	that it's not true.	03:48:29
3	Q. And the same goes for the sixth topic,	03:48:31
4	based on the bingo patterns, you didn't analyze	03:48:35
5	any bingo patterns, did you?	03:48:39
6	A. Correct.	03:48:41
7	Q. And do you know the names of any bingo	03:48:41
8	patterns?	03:48:44
9	A. No.	03:48:45
10	Q. Have you ever played bingo?	03:48:45
11	A. When I was child.	03:48:47
12	Q. So anything you say there is based	03:48:51
13	solely on the comments by VGT's executive	03:48:54
14	Mr. North?	03:48:57
15	A. Correct. As I said, I have no reason to	03:48:58
16	doubt the accuracy of what he's telling me.	03:49:01
17	Q. The same thing goes for the seventh	03:49:08
18	issue there, I understand that CHG uses many of	03:49:10
19	the same pay tables as VGT, in particular VGT's	03:49:11
20	most popular pay tables, and that's 81.	03:49:15
21	Again, that's your conversation	03:49:19
22	with Mr. North, correct?	03:49:20
23	A. Correct.	03:49:21
24	Q. And you did no independent -- you took	03:49:21
25	no independent effort to verify any of that?	03:49:23

Transcript of Dr. Yoram (Jerry) Wind  
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1	A. Correct.	03:49:26
2	Q. And you haven't reviewed any of Castle	03:49:26
3	Hill's pay tables?	03:49:29
4	A. Correct.	03:49:31
5	Q. And eighth and finally, you say there is	03:49:42
6	emphasis that the CHG brand logo is displayed in	03:49:44
7	the same discrete manner as the VGT brand logo;	03:49:46
8	namely, in a small type in the lower right corner	03:49:50
9	of the round top section of the EGMs. Without a	03:49:52
10	more prominent use of the brand logo, players are	03:49:55
11	more likely to rely on the EGMs' other trademarks	03:49:58
12	and trade dress as source indicators to help them	03:50:01
13	recognize which EGMs to -- is which.	03:50:03
14	So if you can look back on page	03:50:09
15	seven at the pictures of the game, can you tell me	03:50:13
16	where those brand logos are?	03:50:15
17	A. They should be at the bottom lower right	03:50:20
18	side. You can hardly see them. There is a	03:50:22
19	picture that I provided somewhere here, it was an	03:50:25
20	enlargement of this section.	03:50:29
21	Q. Sure. If you look in your rely report,	03:50:30
22	I think that's what you're referring to.	03:50:32
23	A. Right.	03:50:34
24	Q. All I have to do is find it myself.	03:50:37
25	A. It's on page nine of the reply report.	03:50:46

Transcript of Dr. Yoram (Jerry) Wind  
Conducted on September 20, 2018

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1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: We're now on the  
3 record. Here begins tape number one of the  
4 videotaped deposition of Yoram Jerry Wind  
5 taken in the matter of Video Gaming Tech  
6 versus Castle Hill Studies. Today's date is  
7 September 20, 2018. The time on the video  
8 monitor 8:04 a.m.

08:04:40  
08:04:41  
08:04:44  
08:04:47  
08:04:49  
08:04:53  
08:04:56

9 The videographer for today is  
10 Armando Forte representing Planet Depos.  
11 This video deposition is taking place at the  
12 Offices of Saul Ewing, that's 1500 Market  
13 Street, Philadelphia, Pennsylvania. Would  
14 counsel please identify themselves and who  
15 they represent.

08:04:59  
08:05:00  
08:05:04  
08:05:06  
08:05:09  
08:05:11  
08:05:13

16 MR. PLATT: Henry Platt, Saul Ewing  
17 Arnstein & Lehr, on behalf of the Defendants.

08:05:15  
08:05:16

18 MS. FLAX: Sherry Flax, Saul Ewing  
19 Arnstein & Lehr, on behalf of Castle Hill.

08:05:20  
08:05:22

20 MR. ROMAN: Neil Roman, Covington &  
21 Burling, on behalf of the Plaintiff VGT.

08:05:27  
08:05:28

22 THE VIDEOGRAPHER: The Court  
23 Reporter for today is Jennifer Miller  
24 representing Planet Depos. She will now  
25 swear in the witness and we will proceed.

08:05:31  
08:05:31  
08:05:34  
08:05:44

Transcript of Dr. Yoram (Jerry) Wind  
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1	me maybe two minutes, we're maybe almost	03:55:41
2	done. Let's go off the record.	03:55:46
3	THE VIDEOGRAPHER: Off the record	03:57:07
4	at 3:56.	03:57:07
5	(Recess.)	03:57:09
6	THE VIDEOGRAPHER: Back on the	03:59:32
7	record at 3:58.	03:59:33
8	MR. PLATT: Dr. Wind, I have no	03:59:35
9	further questions. Thank you for your time.	03:59:39
10	THE WITNESS: Thank you.	03:59:41
11	MR. ROMAN: No questions. Thank	03:59:42
12	you.	03:59:43
13	THE VIDEOGRAPHER: This then	03:59:44
14	concludes the deposition. The time 3:59 p.m.	03:59:45
15	THE COURT REPORTER: Can you both	03:59:50
16	confirm for the record the order and that you	03:59:51
17	want a rough draft and a final by Monday?	04:00:04
18	MR. ROMAN: Yes.	04:00:07
19	MR. PLATT: Regular and final, but	04:00:17
20	need a rough.	04:00:20
21	(Whereupon, the deposition was	
22	concluded at 4:00 p.m.)	
23		
24		
25		



Transcript of Dr. Yoram (Jerry) Wind  
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CERTIFICATE OF REPORTER - NOTARY PUBLIC

I, JENNIFER BILLSTEIN-MILLER, the  
officer before whom the foregoing deposition was  
taken, do hereby certify that the foregoing  
transcript is a true and correct record of the  
testimony given; that said testimony was taken by  
me and thereafter reduced to typewriting under my  
direction; that reading and signing was not  
requested; and that I am neither counsel for,  
related to, nor employed by any of the parties to  
this case and have no interest, financial or  
otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set  
my hand and affixed my notarial seal this 20th day  
of September, 2018.

My Commission Expires:

